



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 22, 24, 27, 30, 74, 80, 90, 95, and 101

[WT Docket No. 10-112; FCC 17-105]

Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission adopts rules to streamline and harmonize the Commission’s license renewal and service continuity rules for the Wireless Radio Services (WRS). This unified regulatory framework includes: establishing a consistent standard for renewing wireless licenses; setting forth safe harbors providing expedited renewal for licensees that meet their initial term construction requirement and generally remain operating at or above that level; adopting consistent service continuity rules, which provide for automatic termination of any license on which a licensee permanently discontinues service or operation; eliminating unnecessary, legacy “comparative renewal rules”; and requiring that when portions of geographic licenses are sold, both parties to the transaction have a clear construction obligation and penalty in the event of failure, closing a loophole used to avoid the Commission’s construction requirements. This action will enhance competition and facilitate robust use of the nation’s scarce spectrum resources.

DATES: Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, except for the amendments to §§ 1.949, 1.950, and 1.953, which contain information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), and which the Commission will announce by publishing a document in the Federal Register. The amendments to paragraphs (e), (q)(7), (r)(6), (s)(6), and (t)(6) of § 27.14 will become effective after OMB review and approval of § 1.949, which the Commission will announce by publishing a document in the Federal Register; and the amendments to §§

22.317, 22.947, 27.17, 30.106, 74.632, 90.157, 90.631, and 101.65 will become effective after OMB review and approval of § 1.953, and which the Commission will announce by publishing a document in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Joyce Jones at joyce.jones@fcc.gov, of the Wireless Telecommunications Bureau, Mobility Division, (202) 418-1327. For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams at (202) 418-2918 or send an email to PRA@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order (Order) in WT Docket No. 10-112, FCC 17-105, released on August 3, 2017. The complete text of the Order, including all Appendices, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW, Room CY-A157, Washington, DC 20554, or by downloading the text from the Commission's website at https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-105A1.pdf.

Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to FCC504@fcc.gov or calling the Consumer and Government Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

The Commission will send a copy of the Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

I. SECOND REPORT AND ORDER

A. Renewal Requirements for Wireless Radio Services

1. Commission licensing records reflect that, over the next 10 years, the Commission can expect more than 50,000 renewal applications to be filed by geographic-area licensees and more than 625,000 by site-based licensees. By its Order, the Commission implements standardized renewal requirements and expeditious renewal procedures, while continuing to ensure that licenses are renewed in the public interest as required by the Communications Act of 1934, as amended (Act). The Commission finds that adoption

of uniform renewal rules will promote the efficient use of spectrum resources, serve the public interest by providing licensees certainty regarding their license renewal requirements, encourage licensees to invest in new facilities and services, and facilitate their business and network planning.

2. The Commission's current renewal requirements vary widely. Some service rules include comprehensive filing and processing procedures, while others contain only minimal guidance. For example, some radio services have evaluation criteria for a renewal applicant involved in a comparative renewal proceeding but no procedures for filing competing applications. Some services require a detailed showing that the licensee has provided substantial service during the license term. The renewal rules for some of the Commission's newer services generally require the licensee to be providing service or operating on an ongoing basis, after construction, during the license term.

3. In an NPRM released on May 25, 2010 (WT Docket No. 10-112) (WRS Reform NPRM), the Commission proposed to adopt renewal requirements for numerous Wireless Radio Services based on the Commission's model for the 700 MHz Commercial Services Band licensees. Under this three-part approach: (1) renewal applicants would file a detailed renewal showing, demonstrating that they are providing service to the public (or, when allowed under the relevant service rules or pursuant to waiver, using the spectrum for private, internal communications) and substantially complying with the Commission's rules (including any applicable performance requirements) and policies and the Act; (2) competing renewal applications would be prohibited; and (3) if a license is not renewed, the associated spectrum would be returned to the Commission for reassignment. For services licensed by site, the Commission proposed to modify the first part of this approach by requiring affected licensees to certify that they are continuing to operate consistent with their applicable construction notification(s) or authorization(s) (where the filing of construction notifications is not required), rather than making a renewal showing.

4. Renewal Standard. The Commission adopts a unified renewal standard for most Wireless Radio Services licensees, both geographic and site-based. A clear, consistent standard will promote the

efficient use of spectrum resources and will serve the public interest by providing licensees certainty regarding their renewal requirements. To qualify for renewal, each WRS licensee must demonstrate that over the course of its license term, the licensee either: (1) provided and continues to provide service to the public, taking into account the periods of time the applicable service-specific rules give licensees to construct facilities and meet performance benchmarks, or (2) operated and continues to operate over the course of the license term to address the licensee's private, internal communications needs, again taking into account the periods of time the applicable service-specific rules give licensees to construct facilities and meet performance benchmarks.

5. More specifically, for renewal at the end of an initial license term, the licensee must demonstrate that it timely constructed to any level(s) required by the service-specific rules and, thereafter, consistent with the Commission's permanent discontinuance rules, continuously provided service or operated at or above the required level(s) for the remainder of the license term. For subsequent renewals, the licensee must demonstrate that, over the license term at issue, it continuously provided service to the public or operated under the license to meet the licensee's private, internal communications needs, at or above the level required to meet the final construction requirement during the initial term of the license. In all events, the licensee also must certify that its service or operations are continuing. This requirement is reflected in the new § 1.949 the Commission adopts today, which replaces separate renewal rules for each service in various rule parts, as reflected in the final rules.

6. The renewal standard the Commission adopts today follows the approach the Commission adopted in many of its proceedings for new wireless services over the past decade. Beginning with the 700 MHz First Report and Order in 2007 (WT Docket No. 06-150), and continuing to the 2016 600 MHz Report and Order (GN Docket No. 12-268), the Commission has established that licensees "must demonstrate that they are providing adequate levels of service over the course of their license terms." Most recently, the Commission applied the same principles in the Spectrum Frontiers Report and Order (GN Docket No. 14-177), concluding that Upper Microwave Flexible Use Service

(UMFUS) licensees would meet the renewal standard in their initial license terms if they met certain performance benchmarks and were “using [their] facilities to provide service.” For subsequent license terms, the Commission concluded that it would “award a renewal expectancy for subsequent license terms if the licensee continues to provide at least the initially-required level of service through the end of any subsequent license terms.” Today, the Commission applies that policy across the board to most WRS licenses, finding that these renewal requirements are in the public interest and their benefits outweigh any likely costs.

7. As the Commission has stated in a number of decisions, a licensee’s renewal obligations are distinct from its performance (also known as construction or buildout) requirements. Many of the Commission’s specific service rules require performance showings to be made at the midpoint and end of an initial license term regarding population or area covered. For some services, licensees must demonstrate, or may elect to demonstrate, substantial service as their performance requirement during their initial license term. Under the Commission’s performance requirement rules, a licensee generally provides a snapshot in time (usually a date in close proximity to, but no later than, the construction deadline) of the level of service that it is providing to the public or its level of operation. By contrast, the showing for renewal—also sometimes referred to as a substantial service showing—requires more detailed information regarding a licensee’s services or operations and related matters for its entire license period. Thus, under the Commission’s current rules, those licensees with a substantial service performance requirement at the end of their initial license term are subject to two distinct substantial service requirements, one to support their renewal application and one for performance purposes. The renewal standard the Commission adopts today and the accompanying discussion should make it more readily apparent to licensees that the showing required for renewal is distinct from the showing required to meet a performance requirement.

8. As the Commission stated in the WRS Reform NPRM, the Wireless Radio Services that are licensed by rule or on a “personal” basis or that have no construction/performance obligation are

beyond the scope of this proceeding and are not encompassed within the renewal policies the Commission adopts today. Similarly, these policies do not extend to public safety licenses issued based on the applicant demonstrating eligibility under §§ 90.20 or 90.529, or public safety licenses issued in conjunction with a waiver pursuant to section 337 of the Act. The Commission also excludes the Educational Broadband Service (EBS) from application of the renewal requirements articulated in the Order since this service presents unique issues that are under consideration in a separate, comprehensive EBS rulemaking proceeding (See WT Docket No. 03-66).

9. In contrast, the Commission finds it is no longer necessary to provide any sort of modified renewal requirements for Broadband Radio Service (BRS) licensees as the Commission had proposed in the WRS Reform NPRM. Given that the BRS transition, which began in 2010, is now complete, the Commission concludes that the BRS is appropriately included within the overall renewal framework now. The Commission also rejects Motorola's request that the partitioned and/or disaggregated Part 80 VHF Public Coast (VPC) Service spectrum it acquired for the purpose of promoting public safety and private land mobile systems be excluded from application of the Commission's generally applicable renewal framework. The Commission is not persuaded that the characteristics of the Motorola-held VPC Service spectrum and its planned usage warrant different treatment from other WRS licenses regarding the renewal rules, and thus the Commission does not grant the exception from the renewal policies sought by Motorola.

10. Implementation of Renewal Standard. Many commenters express concern that the renewal framework proposed in the WRS Reform NPRM would cause uncertainty in the renewal process and create undue administrative burdens for licensees and Commission staff. Some commenters suggest that the Commission apply a certification process for all renewal applications. Other commenters suggest that the Commission should adopt some form of a safe harbor.

11. The Commission agrees that clearer and more certain renewal processes will benefit both licensees and the Commission and concludes that adopting a set of safe harbors—based on licensee

certifications—will serve the public interest by reducing filing burdens on licensees and concentrating scarce Commission resources on reviewing renewal filings that warrant close scrutiny. Accordingly, the Commission adopts four safe harbors to accommodate four license renewal scenarios by which a renewal applicant can meet the renewal standard adopted in this Order. These license renewal safe harbors are for (1) site-based licenses; (2) wireless providers using geographic licenses; (3) private systems using geographic licenses; and (4) partitioned or disaggregated licenses without a performance requirement. In a future proceeding, the Commission may consider additional safe harbors as necessary and warranted. If a licensee is unable to meet the requirements of one of the enumerated safe harbors, the licensee must make a more detailed “renewal showing” as part of its renewal application; the requirements for a renewal showing are described following the discussion of the renewal safe harbors.

12. Each safe harbor scenario is based on three certifications, which are subject to the Form 601 condition that “[w]illful false statements made on this form or any attachments are punishable by fine and/or imprisonment (18 U.S.C. 1001) and/or revocation of any station license or construction permit (47 U.S.C. 312(a)(1)), and/or forfeiture (47 U.S.C. 503).” If the renewal applicant, in good faith, can make all three certifications, its renewal application will be subject to routine processing, and no further detailed renewal showing will be required as part of the renewal application. The first certification in each scenario addresses the renewal applicant’s ongoing provision of service and/or operations, and is tailored to the particular nature of licenses covered under a given safe harbor. The second certification requires the licensee to certify that no permanent discontinuance of service or operation (as defined below as an unbroken failure to provide service or operate over a specified period of days) occurred during the license term. The third certification requires the licensee to certify that it has substantially complied with all applicable FCC rules, policies, and the Act.

13. Site-based Licenses. Consistent with the Commission’s certification proposal in the WRS Reform NPRM for the renewal of site-based licensees, the Commission adopts a safe harbor for site-based WRS licensees. With site-based services, a licensee’s initial application for authorization

provides the exact technical parameters of its planned operations (such as transmitter location, frequency, and power levels), while the licensee's subsequent notification, that it has completed construction, confirms that the facilities have been constructed consistent with its authorization (or with minor modifications as may be permitted by the applicable service rules). A licensee also may file to modify its license, which may lead to a modified authorization and the submission of a subsequent construction notification. Consequently, at the time a site-based service provider files a renewal application, it should be operating as licensed.

14. A site-based WRS licensee will meet the Commission's renewal standard if it can certify that it is continuing to operate consistent with the licensee's most recently filed construction notification (or most recent authorization, when no construction notification is required), and make the certifications regarding permanent discontinuance and substantial compliance with Commission rules and policies that are applicable to all renewal applicants seeking to avail themselves of one of the renewal safe harbors. Consistent with the Commission's treatment of wireless providers using geographic licenses as discussed below, licensees who temporarily reduce their operations for fewer than 180 days may avail themselves of the safe harbor. The Commission concludes that this safe harbor for site-based WRS licensees is in the public interest and will expedite the renewal process for licensees, ensure spectrum is being used efficiently to provide service to the public or for private internal needs, and allow Commission staff to concentrate scarce resources on renewal applications that warrant heightened scrutiny. Moreover, applying the safe harbor process to site-based services will ensure that renewed licenses in these services are being operated, and if they are not, the licensee must submit a renewal showing as discussed below. This safe harbor may be used by any site-based WRS license in the services listed in Appendix G of the Order.

15. Wireless Providers Using Geographic Licenses. The Commission also finds that it would be in the public interest to adopt a safe harbor for WRS licensees that provide service to customers using geographic licenses. Many commenters urge the Commission to adopt a streamlined certification process

for renewal of geographic licenses like what the Commission proposed for site-based licenses. Most recently, Verizon argues that a straightforward renewal certification “will obligate the licensee to verify that it is complying with the terms of its authorization and Commission rules, including buildout, spectrum utilization, or other performance requirements.” Similarly, CTIA maintains that a certification for geographic license renewal “would require that licensees verify that they have complied with all buildout, performance, and other rules—demonstrating that they are providing service—without imposing unjustified burdens.” Both Verizon and CTIA argue that a certification is consistent with the renewal standard adopted in the Spectrum Frontiers Order for the millimeter wave spectrum bands at 28 GHz, 37 GHz, and 39 GHz. The Commission agrees that a certification, as part of a comprehensive safe harbor for geographic licenses, will streamline its renewal processes, ensure compliance with its rules, and provide clarity and certainty for WRS licensees.

16. Accordingly, the Commission adopts a safe harbor for WRS providers using geographic licenses consistent with the approach taken in the Spectrum Frontiers Order. A geographically-licensed WRS licensee providing service to customers will meet the renewal standard if it can make the following certifications. For a licensee in its initial license term¹ with an interim performance requirement, the licensee must certify that (1) it has met its interim performance requirement and that over the portion of the license term following the interim performance requirement (up until the deadline for meeting the final performance requirement), the licensee continues to use its facilities² to provide at least the level of service or operation required by its interim performance requirement,³ and (2) it has met its final

¹ For performance showing requirements at the end of the initial license term, there are two filing processes in ULS depending on the service of the license. For some services, licensees file a notification of construction (NT) and a separate renewal application. For other services, licensees include their performance showing as an exhibit to the renewal application and do not file a separate NT. Under either filing method, the licensee would certify in its renewal application that it has submitted a final performance showing in good faith, but acceptance of its safe harbor renewal certification is contingent on the Commission’s review and acceptance of the performance showing. This is true as well for private systems using geographic licenses.

² The Commission determines that use of facilities includes operations under any spectrum leasing arrangement.

³ The Commission notes that any licensee that fails to meet its interim performance requirement will not be able to avail itself of this safe harbor option at the end of the initial license term because it will be unable to certify that it has met its interim performance requirement.

performance requirement and continues to use its facilities to provide at least the level of service required by its final performance requirement through the end of the license term. For a licensee in its initial license term with no interim performance requirement, the licensee must certify that it has met its final performance requirement and continues to use its facilities to provide at least the level of service required by its final performance requirement through the end of the license term.⁴ For a licensee in any subsequent license term, the licensee must certify that it continues to use its facilities to provide at least the level of service required by its last performance requirement through the end of any subsequent license terms. Some commenters ask the Commission to recognize that there are circumstances (e.g., network upgrades, natural disasters, power outages, routine maintenance, temporary service outages) during which a licensee may need to “reduce overall coverage below the level required by buildout requirements, or briefly turn down service...for a limited period.” CTIA maintains that “these events should not disqualify a licensee from using the safe harbor.” Thus, the Commission clarifies that licensees who temporarily drop below their construction benchmark for fewer than 180 days may avail themselves of the safe harbor. In addition, the licensee must make the certifications regarding permanent discontinuance and substantial compliance with Commission rules and policies that are applicable to all renewal applicants seeking to avail themselves of one of the renewal safe harbors. This safe harbor may be used by geographic licensees in the Wireless Radio Services listed in Appendix H of the Order.

17. Private Systems Using Geographic Licenses. The Commission finds that the public interest will be served by adopting a separate safe harbor for private systems using geographic licenses. In the WRS Reform NPRM, the Commission queried what factors should be considered during renewal of licenses used for a licensee’s private, internal communications needs. Commenters generally object to applying the WRS Reform NPRM’s proposed renewal framework to geographic licensees that deploy private, internal communications systems. Instead, numerous commenters urge the Commission to adopt

⁴ The Commission recognizes that a licensee may file a renewal application as early as 90 days prior to license expiration. 47 CFR 1.949(a). The Commission notes that a licensee with a performance requirement deadline coincident with its license expiration date must meet any applicable performance requirement before it can certify compliance with the safe harbor requirements and file a renewal application.

a certification for such licensees. The Commission agrees that a certification, as part of a comprehensive safe harbor for geographic licensees using their licenses for private, internal purposes, will streamline its renewal processes, ensure compliance with its rules, and provide clarity and certainty for such licensees.

18. Accordingly, the Commission adopts a safe harbor for WRS licensees using their geographic licenses for private, internal systems. A geographically licensed WRS licensee using its license for private, internal purposes will meet the renewal standard if it can make the following certifications. For a licensee in its initial license term with an interim performance requirement, the licensee must certify that (1) it has met its interim performance requirement and that over the portion of the license term following the interim performance requirement (up until the deadline for meeting the final performance requirement), the licensee continues to use its facilities to further the licensee's private, internal business or public interest/public safety needs at or above the level required to meet its interim performance requirement, and (2) it has met its final performance requirement and continues to use its facilities to further the licensee's private business or public interest/public safety needs at or above the level required by its final performance requirement through the end of the license term. For a licensee in its initial license term with no interim performance requirement, the licensee must certify that it has met its final performance requirement and continues to use its facilities to further the licensee's private business or public interest/public safety needs at or above the level required by its final performance requirement through the end of the license term. For a licensee in any subsequent license term, the licensee must certify that it continues to use its facilities to further the licensee's private business or public interest/public safety needs at or above the level required to meet its last performance requirement. Consistent with the treatment of wireless providers using geographic licenses as discussed above, licensees who temporarily drop below their construction benchmark for fewer than 180 days may avail themselves of the safe harbor. In addition, the licensee must make the certifications regarding permanent discontinuance and substantial compliance with Commission rules and policies that are applicable to all renewal applicants seeking to avail themselves of one of the renewal safe harbors. This safe harbor may

be used by geographic area licensees in the Wireless Radio Services listed in Appendix H of the Order.

19. Partitioned or Disaggregated Licenses. As discussed in more detail below, the Commission's rules permit parties to partitioning or disaggregation agreements to choose between two options to determine how the parties will satisfy any relevant pending performance requirement for the license after it has been divided by geographic partitioning or spectrum disaggregation arrangements. In cases where the original licensee has satisfied the applicable performance requirement prior to partitioning or disaggregating the license, however, the recipient of the partitioned area or disaggregated spectrum has no performance requirement associated with the partitioned or disaggregated portion. This lack of a performance requirement is relevant in the renewal context because, while the partitioner or disaggregator may be able to meet a safe harbor (to demonstrate that over the course of its license term, the licensee provided and continues to provide service to the public, or operated and continues to operate the license to meet the licensee's private, internal communications needs), the partitionee or disaggregatee will not be able to avail itself of the safe harbors as adopted above because it cannot certify continuing service or operation consistent with its final performance requirement because it has none. Accordingly, the safe harbor approach must be adjusted to provide the partitionee or disaggregatee with a mechanism for demonstrating compliance with the renewal standard.

20. To this end, the Commission adopts an approach that applies to WRS licensees with partitioned or disaggregated licenses when there is no performance requirement. Such a licensee will meet the renewal standard if it can satisfy the following safe harbor. The licensee must certify that it uses and continues to use its facilities either to provide service to the public or to further the licensee's private, internal business or public interest/public safety needs. Thus, although the Commission does not impose a specific performance requirement for such licensees at renewal of the current license term, in order to avail itself of the streamlined safe harbor renewal process for any subsequent license term, a licensee without a performance requirement must demonstrate some level of service or operation over the subsequent license term. In addition, the licensee must make the certifications regarding permanent

discontinuance (as defined below) and substantial compliance with Commission rules and policies that are applicable to all renewal applicants seeking to avail themselves of one of the renewal safe harbors. This safe harbor may be used by any WRS licensee with a partitioned or disaggregated license without an associated performance requirement. Any licensee that cannot meet the requirements of the safe harbor must submit a renewal showing as discussed below.

21. The Commission recognizes that this safe harbor, unlike the others, does not prescribe a specific level of service or operation required for renewal. As the Commission has explained, however, “[t]he goal of our construction requirements in both the partitioning and disaggregation contexts is to ensure that the spectrum is used to the same degree that would have been required had the partitioning or disaggregation transaction not taken place.” In the scenario addressed here, the partitioner or disaggregator has already met the associated performance requirement for the license; any additional construction undertaken by the partitionee or disaggregatee exceeds the relevant performance benchmark for the original license and thus does not contravene the goal of the Commission’s construction requirement in the partitioning and disaggregation context. However, the Commission contemplates taking action if it appears that parties to a partitioning or disaggregation are attempting to abuse its rules.

22. Renewal Showing. The Commission seeks to provide licensees with certainty and clarity regarding the renewal process, and thus have adopted four safe harbors to provide licensees with a streamlined mechanism for meeting the renewal standard. The Commission expects that most licensees will be able to avail themselves of its streamlined safe harbor process and receive timely renewal grants. In the event a licensee is unable to meet the requirements of any of the enumerated safe harbors, however, it must file a “renewal showing” to demonstrate how it meets the renewal standard the Commission adopts in this Order. Examples of licensees that will not be able to meet a safe harbor, but for whom there nonetheless may be legitimate bases that warrant renewal, include a licensee that no longer provides service or no longer operates at the level required to meet its final performance requirement, or a licensee that has modified its service or operations since its final performance requirement to offer novel services

or employ a unique system architecture. These scenarios warrant additional scrutiny before the Commission can determine whether license renewal is in the public interest. The Commission reiterates that it will not require renewal applicants to file a renewal showing if they can meet the renewal standard via a safe harbor.

23. In the WRS Reform NPRM, the Commission proposed to require all renewal applicants to meet its renewal standard by filing a detailed renewal showing to demonstrate that they are providing service to the public (or, when allowed under the relevant service rules or pursuant to waiver, using the spectrum for private, internal communication), and substantially complying with the Commission's rules (including any applicable performance requirements) and policies and the Act. The Commission now turns toward a consideration of this proposed standard for cases in which a renewal applicant does not meet one of the safe harbors adopted herein.

24. The renewal showing proposed in the WRS Reform NPRM followed the paradigm adopted in the 700 MHz Report and Order. After the release of the WRS Reform NPRM, the Commission has adopted the 700 MHz Commercial Services renewal paradigm in four additional services—AWS-4, H Block, AWS-3, and 600 MHz. Specifically, the Commission proposed to consider the following factors when evaluating whether a renewal showing met the renewal standard: (1) the level and quality of service provided by the applicant (e.g., the population served, the area served, the number of subscribers, the services offered); (2) the date service commenced, whether service was ever interrupted, and the duration of any interruption or outage; (3) the extent to which service is provided to rural areas; (4) the extent to which service is provided to tribal lands; and (5) any other factors associated with a licensee's level of service to the public.

25. Many commenters object to the adoption of this renewal showing for all WRS licensees. These commenters argue that the proposed renewal showing is complex and would impose substantial costs and burdens on licensees. Other commenters assert that the proposed renewal process is unclear and creates uncertainty for licensees. Still other commenters maintain that the proposed process requests

information already in the Commission’s possession, requests detailed information that licensees do not maintain, and may require disclosure of competitively sensitive information. The Commission acknowledges commenters’ many concerns regarding a general requirement that all WRS licensees submit detailed renewal showings and have concluded that, in many cases, streamlined applications containing the required certifications for safe harbor treatment will be sufficient to ensure that the Commission renews licenses in the public interest, consistent with the Act. The Commission emphasizes that licensees that can take advantage of one of the “safe harbor” renewal applications described above will not be required to submit a renewal showing as part of their renewal applications. Rather, only licensees that cannot satisfy one of the enumerated safe harbors will be required to file a detailed renewal showing. To fulfill the Commission’s statutory mandate to ensure efficient spectrum use consistent with the public interest, where a licensee does not satisfy one of the streamlined processes, the Commission must undertake a closer examination of a licensee’s record of service or operation over its license term. Consistent with the Commission’s conclusions in the AWS-4, H Block, AWS-3, and 600 MHz proceedings, the Commission finds that the renewal showing it adopts today, applied in the limited circumstances described herein, is in the public interest and its benefits outweigh any likely costs.

26. Accordingly, licensees that cannot satisfy the renewal standard under one of the enumerated safe harbors can nonetheless meet the renewal standard by demonstrating that they are providing service to the public (or, when allowed under the relevant service rules or pursuant to waiver, using the spectrum for private, internal communication), using the following renewal showing, as applicable:

- (1) the level and quality of service/operation provided by the applicant (e.g., for service—the population served, the area served, the number of subscribers, the services offered; for operation—the number of users (if applicable), the operating area, the type of operation);
- (2) the date service/operation commenced, whether service/operation was ever interrupted, and the duration of any interruption or outage;

- (3) the extent to which service/operation is provided to/in rural areas;
- (4) the extent to which service/operation is provided to/in tribal lands; and
- (5) any other factors associated with a licensee's level of service to the public/level of operation.

27. Each of the factors listed above to be considered in a renewal showing directly relates to the renewal standard the Commission adopts today—service or operation over the license term. The Commission will consider the totality of all the factors on a case-by-case basis to determine if a licensee has demonstrated over the course of its license term that it has provided and continues to provide service to the public, or has operated and continues to operate under the license to meet the licensee's private, internal communications needs.

28. In the WRS Reform NPRM, the Commission also asked whether a variety of other factors should be incorporated into the renewal rules. Many commenters object to the collection of additional data in support of a renewal showing. On balance, the Commission agrees that the costs of requesting additional information beyond the renewal showing as adopted would outweigh the benefits of such additional information. The Commission thus decides not to add further factors at this time to the renewal showing requirements. The Commission finds that its renewal framework strikes an appropriate balance between the need for information to fully evaluate renewal applications that cannot meet the safe harbors and minimizing burdens on licensees.

29. The Commission disagrees with commenters that argue that the option of filing a full renewal showing would be contrary to the Commission's original proposal for site-based services. Under the Commission's prior proposal, if a site-based licensee could not make the requisite certification, the renewal application could not be granted and the spectrum would be returned to the Commission. Under the renewal framework the Commission adopts today, if a site-based licensee cannot meet the requirements of the safe harbor, it may choose to file a renewal showing to explain why it should

nonetheless retain its license, thus providing additional flexibility to such a licensee.

30. Implementation Timeline. The renewal framework represents, for some WRS licenses, a significant change in how the Commission will evaluate and process renewal applications going forward.⁵ For licensees that already meet the renewal standard, the unified renewal paradigm presents a streamlined process using safe harbors with minimal filing burdens and certain, timely renewal processing. The Commission recognizes, however, that other licensees will need time to come into compliance with the renewal standard. Accordingly, the Commission adopts an implementation schedule that will make the benefits of the renewal framework available immediately for those licensees most likely able to avail themselves of the streamlined processes, but provide ample time for those licensees that may need to come into compliance with the new rules. In all instances, compliance with the renewal standard, via either a safe harbor or renewal showing, will be assessed from the effective date of the new rules. Thus, for example, the requirement to provide continuous service/operation does not cover periods before the effective date of those rules. Nor does a licensee seeking safe harbor treatment need to certify that it met the necessary criteria during time periods prior to the effective date.

31. Site-based Licenses. For site-based licensees, the new renewal paradigm is akin to their existing renewal requirements. As discussed above, at the time a site-based service provider files a renewal application, it should be operating as licensed. Thus, current renewal requirements for site-based licensees are much like the safe harbor the Commission adopts for such licensees. The Commission finds that the renewal standard and renewal processes (whether streamlined or entailing an evaluation of the licensee's full renewal showing) should be made available to site-based licensees as soon as possible and thus determines that such rules will be applied to those licensees without a transition period, with one exception, effective upon their applicable effective dates. For microwave licenses in the Common Carrier Fixed Point-to-Point Microwave Service, licensees will not be required to comply with the revised

⁵ Because substantial compliance with applicable FCC rules and policies and the Act is an ongoing obligation of licensees, this will be assessed over the entire term of the license at renewal.

renewal rules for site-based licenses until October 1, 2018, in order to provide sufficient time for them to undertake a compliance review necessary to make the required certification regarding operation.

Existing service-specific renewal rules will remain in effect until the renewal rules adopted herein become effective. Applications filed prior to the effective date of the new rules will be processed under the rules in effect when they are filed.

32. Geographic-area Licenses. Given the inconsistency of the Commission's renewal rules across wireless services, the Commission has seen markedly different renewal submissions by licensees describing the level of service or operation in the various specific services within the WRS. Some licensees have submitted renewal applications clearly demonstrating service or operation over the entire license term, which would meet the renewal standard the Commission adopts today. Others have filed applications that demonstrate service or operation over significantly less than the entire license term, which would not meet the Commission's new renewal standard contemplating ongoing service or operation during the license term. The Commission seeks to provide sufficient time to geographic-area licensees that have yet to be subject to the renewal standard so that they can comply with the new standard (indeed, some licensees are not yet required to even demonstrate service over the license term). The Commission determines that the renewal standard and the renewal framework will take effect for such licensees on January 1, 2023, replacing the existing service-specific renewal rules, giving licensees at least five years to comply with the new renewal rules (giving all licensees sufficient time to show service over the license term, starting from the effective date of the new renewal rules). Existing service-specific renewal rules will cease to be effective as of January 1, 2023. The Commission notes, however, that licensees in the 700 MHz, AWS-4, H Block, AWS-3, and 600 MHz services already are subject to the renewal standard that it adopts today for all WRS geographic licenses. Accordingly, the Commission concludes that these licensees should be able to avail themselves of the safe harbors and associated streamlined procedures prior to January 1, 2023. Thus, for licensees in the 700 MHz, AWS-4, H Block, AWS-3, and 600 MHz services, the safe harbor rules will apply immediately upon their effective dates.

Existing service-specific renewal rules will remain in effect until the renewal rules adopted herein become effective. Applications filed prior to the effective date of the new rules will be processed under the rules in effect when they are filed.

33. Geographic and Site-based Licensed Services—Other Requirements. Consistent with the Commission’s proposal in the WRS Reform NPRM, the Commission applies a single regulatory compliance demonstration requirement to all renewal applicants, whether licensed by geographic area or by site. In addition, the Commission prohibits the filing of competing applications against such renewal applications. Further, if a renewal application cannot be granted, the associated spectrum generally will be returned to the Commission for re-licensing under the applicable processes.

34. Regulatory Compliance Demonstration. In the 700 MHz First Report and Order, the Commission stated that, as part of their renewal filing, renewal applicants must demonstrate “that they have substantially complied with all applicable Commission rules, policies, and the Communications Act of 1934, as amended, including any applicable performance requirements.” As the Commission stated in the WRS Reform NPRM, such a regulatory compliance demonstration serves the public interest by facilitating the Commission’s evaluation of the character and other qualifications of a renewal applicant.

35. To aid in this evaluation, the Commission proposed a detailed submission of documents regarding compliance by the licensee and certain defined affiliates. Industry commenters uniformly opposed adoption of the proposed regulatory compliance demonstration as a prerequisite to renewal on the basis that it is onerous and unduly burdensome and could impose significant costs, particularly on rural and regional carriers.

36. The Commission has a statutory duty to ensure that licensees substantially comply with all applicable Commission rules and policies and the Act. At the same time, where possible and practicable, the Commission seeks to streamline the existing renewal application processes and minimize filing burdens on licensees. In lieu of the regulatory compliance demonstration proposed in the WRS Reform NPRM, the Commission concludes that it can perform its duties and further its public interest

goals effectively by requiring a renewal applicant to certify that it has substantially complied with all applicable FCC rules, policies, and the Act. If a particular renewal applicant is unable to make the substantial compliance certification, it will need to provide an explanation of the circumstances preventing such a certification and why renewal of the subject license should still be granted.

37. Elimination of Comparative Renewal Rules for WRS. As proposed in the WRS Reform NPRM and consistent with the action the Commission took in the WRS Reform First Report and Order in this proceeding adopted in tandem with the Cellular Reform Second Report and Order on March 23, 2017 (WT Docket No. 12-40), and in several other proceedings over the last decade, the Commission prohibits the filing of competing applications for all WRS and eliminates the remaining comparative renewal procedures and requirements across various rule parts.

38. The WRS Reform NPRM proposed to prohibit the filing of competing renewal applications for all WRS as part of its proposed uniform WRS renewal process. The majority of commenters support the Commission’s proposal to eliminate service-specific rules regarding the filing of competing applications and the use of comparative hearings to resolve them. A number of commenters maintain that the comparative renewal process is an outdated vestige of licensing rules predating the Commission’s current reliance on auctions in many services.

39. The Commission deletes the remaining service-specific comparative renewal rules and prohibits the filing of competing renewal applications for all WRS. This approach is consistent with the Commission’s determinations in many other commercial wireless service proceedings over the last ten years—including those for the AWS-3 and AWS-4 Bands, the H Block, the 600 MHz Band, and the 700 MHz Commercial Services Band—and with the elimination of comparative renewal rules applicable to the Cellular Service. The same logic that the Commission used in exempting those bands from comparative renewal applications likewise applies to the remaining WRS bands. The Commission previously found, and commenters agree here, that the public interest is not served by the filing of time-consuming and costly competing applications, and a prohibition on competing applications will “protect[]

the public interest without creating incentives for speculators to file ‘strike’ applications.”

40. The few commenters that support retention of the comparative renewal application rules argue that, without the ability to file competing applications, there is no way to discover disqualifying facts about incumbent licensees. The renewal requirements the Commission adopts today, however, will provide it with ample information to determine whether a particular license renewal is in the public interest. Some commenters also argue that competing applications are rare, but this only strengthens the rationale to eliminate the outdated rules. The Commission finds that the best course is to remove the comparative renewal rules and harmonize the approach across spectrum bands—many of which, as discussed above, already prohibit the filing of competing applications. In the event that an entity lacks standing to file a petition to deny a WRS license renewal application, it may still bring relevant facts to the attention of the Commission by means of an informal filing.

41. If a license is not renewed, the associated spectrum will be returned to the Commission as discussed below, allowing parties that may have been inclined to file a competing application to participate in the auction of spectrum recovered from geographic licensees or apply for spectrum recovered from a Cellular or site-based licensee.

42. Return of Spectrum to Commission if Renewal Application Is Denied. Consistent with the Commission’s proposals in the WRS Reform NPRM, the Commission concludes that, if a WRS licensee cannot meet the renewal standard and its license cannot be renewed, its licensed spectrum will be returned automatically to the Commission. For site-based licenses, the Commission will continue to apply the policy of having spectrum revert to a geographic area licensee, if applicable, if an underlying site-based authorization is not renewed.

43. One overarching goal in this proceeding is to ensure that valued spectrum resources are rapidly put to their highest and best use. A second goal in this proceeding is to provide licensees with certainty and clarity regarding the rules that apply to them and the consequences for failing to meet those rules. The Commission’s existing spectrum reversion rule employed today serves these dual goals. If a

licensee cannot meet the renewal standard (via safe harbor or renewal showing) or it has permanently discontinued service, or its regulatory compliance certification is insufficient, its renewal application cannot be granted, and its licensed spectrum will return automatically to the Commission.

44. Wireless Radio Services Excluded from Rulemaking. The Commission concludes that certain Wireless Radio Services should be excluded from the new renewal requirements. Specifically, the Commission will not apply the revised renewal paradigm to Wireless Radio Services licenses that have no construction obligations, including services where operations are licensed by rule (and thus there is no individual “license” to renew) or to Wireless Radio Services that can be considered to involve a “personal” license. These services are listed in Appendix I of the Order.

B. Permanent Discontinuance of Operations for Wireless Radio Services

45. All WRS licensees are currently subject to the Part 1 rule governing permanent discontinuance, which provides that an authorization automatically terminates, without specific Commission action, if service is “permanently discontinued.” To promote service continuity, the Commission replaces disparate service-specific rules dealing with permanent discontinuance with a standardized rule for all WRS licensees. This rule will work in concert with construction and renewal obligations to ensure that licensees provide service in a timely manner, continue to provide service over the term of the license, and do not discontinue service for such an extended period of time that it should be deemed permanent.

46. Current service-specific rules do not clearly and consistently define permanent discontinuance resulting in license termination, with a few services defining the term and many services completely lacking any definition. Thus, after meeting any service-specific construction and renewal requirements, some licensees in a service whose rules provide no definition of “permanent” discontinuance might conclude that they are permitted to discontinue service for long periods of time, and that such suspension of service would not trigger automatic license termination. In contrast, other licensees/competitors in a service whose rules define “permanent” discontinuance as specific amount of

time during which operations were suspended (e.g., 90 days) would be subject to automatic license termination if they discontinued service to subscribers for that specified length of time. As the Commission noted in the WRS Reform NPRM, the public interest is not served by such marked regulatory disparities. The Commission accordingly proposed to adopt a uniform discontinuance of service rule for Parts 22, 24, 27, 80, 90, 95, and 101 Wireless Radio Services. The Commission finds that the adoption of a uniform regulatory framework governing the permanent discontinuance of operations for Wireless Radio Services will serve the public interest by: (1) affording similarly situated licensees and like services comparable regulatory treatment; (2) providing licensees and other interested parties clarity and certainty to facilitate business and network planning; and (3) ensuring that valuable spectrum is not underutilized. The rules the Commission adopts today strike the appropriate balance between providing licensees with operational flexibility and ensuring spectrum is not warehoused and does not lie fallow.

47. Most but not all commenters support a uniform regulatory framework governing permanent discontinuance. Commenters disagree, however, on the appropriate discontinuance period to be applied to the various Wireless Radio Services, with some commenters supporting the Commission's proposed time periods while other commenters seek a 365-day discontinuance period for all WRS licensees.

48. Commenters are generally supportive of the Commission's proposal to apply the permanent discontinuance rule commencing on the date a licensee makes its initial construction showing or notification. Some commenters, however, ask that the Commission commence the permanent discontinuance period on the date of a licensee's construction deadline, while Sprint suggests that the Commission use a licensee's final construction deadline date.

49. Section 101.305 of the rules states that common carrier licensees in certain services must notify the Commission of involuntary discontinuance, reduction, or impairment of service within 48 hours, and that voluntary discontinuance by a common carrier licensee in the identified services must

occur only with prior Commission approval, under the procedures of part 63 of the Commission's rules. AT&T asks that the Commission take this opportunity to delete § 101.305, arguing that it is both obsolete and duplicative of other rules, specifically § 101.65 and that the rule's concern for protecting "communities" is misplaced.

50. After reviewing the extensive record in this proceeding, the Commission finds that the public interest will be best served by adopting a uniform regulatory framework governing service continuity. The Commission therefore adopts new § 1.953 as it appears in Appendix A of the Order and deletes multiple rule sections governing permanent discontinuance in specific Wireless Radio Services. As recognized by the Commission in four other proceedings and by commenters in this proceeding, the approach the Commission adopts strikes an appropriate balance between affording licensees operational flexibility and ensuring that licensed spectrum is efficiently utilized. The Commission disagrees with those commenters that oppose the adoption of any permanent discontinuance rules. Allowing licensees unfettered discretion to determine how long scarce spectrum resources lie fallow after meeting relevant construction requirements would be inconsistent with the intent of those requirements and would directly contradict the Commission's statutory obligation to "prevent stockpiling or warehousing of spectrum by licensees or permittees."

51. The Commission replaces the existing hodgepodge of discontinuance rules with a unified regulatory framework that ensures regulatory parity across services and license types and applies the rules on a per-license basis. Under the new rules for all geographically licensed radio services, permanent discontinuance of service for a given license will be defined as 180 consecutive days during which a licensee does not operate or, in the case of WRS licensees providing service to customers, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. The Commission adopted an identical framework for AWS-4, H Block, AWS-3, and 600 MHz, which are all licensed on a geographic basis. In addition, for all radio services licensed by site, permanent discontinuance of service for a given license will be defined as 365 consecutive days

during which a licensee does not operate or, in the case of WRS licensees providing service to customers, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier. A licensee's authorization will automatically terminate, without specific Commission action, if it permanently discontinues service.

52. The rules distinguish between wireless providers providing service to subscribers and private licensee operation. In accordance with the Commission's proposal, for wireless providers, the Commission defines "permanently discontinued" as a period of 180 or 365 consecutive days (for geographic and site-based licenses, respectively) during which the licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to, the provider. The Commission adopts a different approach for wireless licensees that use their licenses for private, internal communications, however, because such licensees generally do not provide service to unaffiliated subscribers. For such private, internal communications, the Commission defines "permanent discontinuance" as a period of 180 or 365 consecutive days (for geographic and site-based licenses respectively) during which the licensee does not operate.

53. The Commission concludes that different rules for geographic versus site-based licenses are warranted by their differing operational characteristics. Under a geographic license, a licensee constructs and operates its entire network in the market under the umbrella of its geographic license. As MetroPCS explains, wireless carriers constantly discontinue individual sites or channels as they reconfigure their networks to increase and adjust capacity. The Commission's goal in this proceeding is not to hamper a licensee's normal network design and reconfiguration processes. Licensees should continue to have the necessary flexibility to add or remove network facilities consistent with their business strategies and network planning processes. Thus, for geographic licensees, the period of discontinuance will not start for a given license until all network facilities operated under that license within the licensed area are discontinued.

54. By contrast, site-based licensees do not have the same flexibility as geographic licensees

to decommission individual facilities. Site-based licensees are authorized to transmit from a particular location or over a particular path and have little flexibility to alter these parameters; ceasing operation on a frequency or band constitutes a total cessation of all service or operation under the site-based license and, unless otherwise provided, would therefore start the clock for measuring the length of discontinued service/operations on that licensed frequency/band at that location/path. Thus, to provide site-based licensees with the necessary flexibility to repair, modify, or upgrade their sites without fear of triggering a discontinuance period that could lead to the automatic termination of their license, the Commission finds that site-based licensees should be afforded a 365-day discontinuance period.

55. The Commission does not find that geographic licensees need a 365-day discontinuance period to adequately conduct technology upgrades and to avoid unfairly penalizing licensees that operate in remote or highly seasonal areas of the country that may be uninhabited for more than half the year. Given the flexibility geographic licensees have to turn off individual facilities in their licensed area so long as at least one facility continues to operate or continues to serve at least one non-affiliated subscriber, the Commission finds that 180 days provides licensees with ample time to effectuate network modifications without triggering a discontinuance period. Adoption of a 180-day discontinuance period substantially increases the amount of time licensees can discontinue operations in some services. However, the Commission decreases the discontinuance period from one year to 180 days in certain services, for example, certain Part 101 geographic licenses and 220-222 MHz geographic licenses (listed in Appendix F of the Order). Given the operational flexibility afforded geographic area licensees discussed above, the Commission concludes that this reduction will not create undue burdens on such licensees. Moreover, in the event additional time is needed, as discussed below, the rules will provide for an automatic 30-day extension or licensees can file for a waiver under § 1.925 of the Commission's rules if additional time is warranted.

56. The Commission agrees with commenters who propose that the discontinuance rule should begin to apply on the date a licensee must meet its first performance requirement benchmark, i.e.,

the construction deadline. Using the construction deadline, versus the date a licensee actually makes its construction notification, will “avoid unduly punishing early adopters who are experimenting with certain business models or technologies, and who later deploy a different technology.” If a licensee files its notification prior to the required construction deadline, the licensee should have the flexibility to alter its network as it sees fit, including turning down the entire system to accommodate changes in business plans or network design. If the Commission were to apply the rule immediately upon the filing of a licensee’s construction showing or notification, it would create a disincentive for licensees to deploy their networks prior to their construction deadline. Such a result would be contrary to the Commission’s goal of rapid spectrum deployment.

57. In most cases, the first performance requirement benchmark is the interim or final construction deadline for geographic licenses, or the 12-month construction deadline for site-based licenses. In a few cases, licensees have partitioned and/or disaggregated their licenses under current rules, and one or more of the resulting licenses does not have a construction deadline. Under the new renewal standard these licenses must be operating by the end of the next full renewal term after their current license term to warrant renewal. As such, the discontinuance rules will apply to these partitioned/disaggregated licenses at that date. This approach provides consistent treatment in that licensees need only be concerned about permanent discontinuance after they are required to be operating (whether at their next construction deadline or renewal). The Commission adopted the same approach for AWS-4, H Block, AWS-3, and 600 MHz.

58. In services where the Commission’s rules currently contain no definition of permanent discontinuance, some licensees may have met their interim construction deadline, but have yet to reach their final construction deadline and may have discontinued operations as part of a business strategy or network plan. Absent a definition of permanent discontinuance, these licensees might have concluded that they could discontinue service for a long period without fear of automatic license termination. While all covered WRS licensees must comply with the permanent discontinuance rules going forward, it is

equitable to provide certain existing licensees with additional time to come into compliance with the rules, if necessary. Thus, in all services that do not currently have an explicit definition of permanent discontinuance, (e.g., Part 24 Personal Communications Services, certain Part 27 Miscellaneous Wireless Communications Services, Part 80 Safety and Special Radio Services, and Part 95 218-219 MHz Service) licensees will be given until January 1, 2019 to come into compliance with the rules adopted today regarding permanent discontinuance. If a licensee in these services is not providing service or is not operational on January 1, 2019, the discontinuance period would start on that date. After that date, a WRS licensee's authorization will automatically terminate, without specific Commission action, if service is permanently discontinued as defined under the newly adopted rules.

59. The Commission declines to adopt Sprint's request to apply the permanent discontinuance rules only after a licensee's final construction date. The permanent discontinuance rules are designed to ensure that once a licensee is required to begin operations or provide service to the public by, e.g., an interim construction date, it continues to do so thereafter without substantial breaks in operation or service. If the Commission generally does not apply the permanent discontinuance rules until after a licensee's final construction date, a licensee would be permitted to initiate service at its interim date and then shut down all operations until the final construction deadline. This result is contrary to the Commission's goal of promoting robust spectrum use. However, for some services a failure to meet an interim construction date results in acceleration of the final construction date and, in some cases, the license expiration date. For these services, if a licensee fails to meet the interim construction date, the discontinuance rule will apply after the licensee's accelerated final construction date.

60. The Commission exclude EBS from application of the new permanent discontinuance rule because this service presents unique issues that are under consideration in a separate proceeding. The Commission finds that it should consider EBS permanent discontinuance policies in the context of the comprehensive EBS rulemaking. For the reasons stated above in the discussion of the renewal policy rules, the Commission finds that BRS licenses and the Motorola-held partitioned and/or disaggregated

Part 80 VHF Public Coast licenses should be subject to the rules and policies adopted herein regarding permanent discontinuance.

61. Section 101.305 contains a number of requirements related to discontinuance, reduction, or impairment of services for some or all Part 101 services. The bulk of these provisions relate to involuntary and voluntary discontinuance, reduction, or impairment of public communications services and required filings to be made with the Commission. In particular, § 101.305(b) requires that covered licensees subject to Title II of the Act must obtain prior approval from the Commission pursuant to the procedures set forth in part 63 of the Commission's rules before they may voluntarily discontinue, reduce, or impair public communications services to a community or part of a community. Because § 101.305 implicates the provision of service pursuant to Title II of the Act and given the limited record addressing this rule, the Commission makes no changes to this rule section at this time.

62. Notification of permanent discontinuance. The Commission adopts the proposed filing requirement that a licensee that permanently discontinues service must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 requesting license cancellation. Such a self-reporting requirement will facilitate timely and accurate recordkeeping of the Commission license and spectrum inventory. However, even if a licensee fails to file the required form requesting license cancellation, an authorization will automatically terminate, without specific Commission action, if service is permanently discontinued as defined by the new rules. The Commission disagrees with the two commenters who ask that the notification period be extended to 30 days. Neither commenter advances a compelling basis for extending the notification period and the proposed 10-day period will ensure that the Commission's records are updated on a timely basis.

63. Extension requests. In addition, the Commission adopts the proposed extension request process under which a request for a longer discontinuance period may be filed for good cause, subject to the requirement that it be filed at least 30 days before the end of the discontinuance period. Under this process, the filing of a request would automatically extend the discontinuance period a minimum of the

later of an additional 30 days or the date upon which the Wireless Telecommunications Bureau (Bureau) acts on the request. Commenters support the proposed automatic process for extension requests. Such an express process provides licensees with the flexibility to request a limited period of additional time for discontinuance of operations as necessitated by the licensee's business and operational needs and the certainty that they will receive a minimum of 30 additional days to resume service.

64. The Commission declines, however, to adopt CCA's proposal for an automatic six-month extension period or case-by-case review. An automatic extension of the permissible discontinuance period of six months runs contrary to the goals of timely and efficient use of the nation's scarce spectrum resources. Although unique circumstances may arise that necessitate a period of discontinuance beyond what is automatically permitted under the new rules, these circumstances can adequately be addressed by the existing waiver processes.

65. Roaming. Several commenters ask that the Commission clarify how its permanent discontinuance rules apply to licensees that serve roamers. The Commission concludes that, for purposes of the permanent discontinuance rule, the term "service" includes service provided exclusively or incidentally to roamers even though such roamers are not subscribers of the licensee providing roaming service. Including roaming within the definition of service serves the underlying goal of the Commission's rules to ensure that licensees are actively using their spectrum—be it to provide service to subscribers or roamers—and not allowing it to lie fallow. The Commission clarifies, however, that a WRS licensee must actually be providing service to a roamer and not merely have the ability to provide service to roamers.

66. Channel keepers. The Commission adopts its proposed rule that operation of so-called channel keepers—devices that transmit test signals, tones, and/or color bars, for example—will not constitute operation or service for the purposes of the permanent discontinuance rule. As the Commission explained previously, "it was clearly unreasonable . . . to believe that the periodic broadcasting of signals that nobody received constituted 'service' within the meaning of the rule. Such an

interpretation is unreasonable; in order to provide a service a provider would, at a minimum, need a customer or other person to serve.” The Commission thus adopts the rule regarding channel keepers as proposed.

67. Verizon asks the Commission to expand the definition of operation to include facilities that are “available” to carry customer traffic but are in “standby” mode and only used on an “as-needed basis depending on capacity demands.” Verizon argues that these systems are needed to allow licensees to maximize efficiency of their spectrum resources and network investment and maintain optimal performance levels while providing seamless service to customers across multiple licenses in the same market. The Commission declines to expand its definition of operation as requested by Verizon. As the Commission explained previously, at a minimum, provision of service requires a customer or other person to serve. That a network is capable of service in “standby mode” or on an “as-needed basis” without providing actual service to a customer or other person is insufficient to constitute service for purposes of the Commission’s permanent discontinuance rules. Moreover, the Commission does not license spectrum on a network basis; rather, it evaluates operational obligations on a license-by-license basis, and thus licensees must maintain continuity of service or operations on a license-by-license basis.

C. Geographic Partitioning and Spectrum Disaggregation Rules and Policies

68. In the WRS Reform NPRM, the Commission proposed a new rule, § 1.950, to standardize and clarify its partitioning and disaggregation rules across services in which such activities are permitted. As part of this proposal, the Commission contemplated establishing consistent performance obligations (i.e., construction and operation) for spectrum licenses that have been divided by geographic partitioning or spectrum disaggregation arrangements. Specifically, the Commission proposed that each party to such an arrangement would be individually required to meet any service-specific performance requirements.

69. At present, there are a wide variety of Wireless Radio Services under the Commission’s authority that are subject to equally varied construction and performance obligations. The Commission’s

current partitioning rules provide licensees several options to meet their construction obligations: (1) Independent Construction—the parties may independently elect to satisfy the construction requirements for their respective partitioned license areas and failure to perform subjects a licensee in this context to forfeiture of its partitioned license; (2) Collective Construction—the parties may collectively share responsibility for meeting the construction requirement for the entire geographic area and if the parties collectively fail, then both will be subject to a range of penalties, including possible license forfeiture; or (3) Partitioner-only Construction—the partitioner may satisfy the construction requirement for the entire pre-partitioned geographic area. Many services allow this third option, but the repercussions for failure to perform vary significantly. In some instances, partitionees must still satisfy a substantial service requirement for the partitioned area at renewal. In others, partitionees can argue that they are not obligated to provide service to obtain license renewal since only the non-performing partitioner is subject to forfeiture of its license at renewal.

70. Licensees also currently have multiple options under the Commission’s disaggregation rules to meet applicable construction obligations: (1) One-party Construction—parties can assign responsibility to either the disaggregator or the disaggregatee, and construction by that party is deemed sufficient for both. Generally, if the designated party fails to perform, only its license is subject to forfeiture at renewal. (2) Shared Construction Responsibility—parties may share responsibility for meeting the construction requirements. Depending on the service, failure to perform by either party could result in forfeiture of both licenses. By contrast, some service rules allow parties to a disaggregation to satisfy the construction requirement in the aggregate rather than individually.

71. A majority of the commenters that addressed the partitioning and disaggregation construction requirements in the WRS Reform NPRM disagree with the Commission’s proposal to require that each party to such arrangements independently satisfy construction obligations. They object largely on the basis that the current rules already promote efficient spectrum use and changing them is unnecessary, or worse, harmful. They contend, among other things, that the new rules will curb interest

in secondary market opportunities, particularly in rural areas, and will disrupt existing private contractual relationships.

72. The Commission's experience with partitioning and disaggregation indicates that parties can, and sometimes do, manipulate the current requirements in ways that result in spectrum in some services lying fallow for long periods of time, contrary to the Commission's stated goal of maximizing efficient spectrum use. For instance, under the current rules, parties have been free to disaggregate a small sliver of a spectrum license over the entire geographic licensed area and assign the entire construction requirement to that particular license. In that circumstance, only that small sliver of spectrum has been subject to license termination or forfeiture, while the bulk of the license has not been subject to any construction requirement. The Commission finds that none of the comments effectively addresses the central rationale for proposing to modify the partitioning and disaggregation performance requirements, i.e., preventing spectrum warehousing. The Commission therefore amends the partitioning and disaggregation rules to prevent spectrum warehousing.

73. In lieu of requiring each party to a partitioning or disaggregation arrangement to certify that it will independently satisfy service-specific construction and/or performance requirements, the Commission will afford such parties the additional option of sharing service-specific performance requirements.⁶ Further, to ensure uniformity and clarity, the Commission adopts § 1.950, largely as proposed, and § 1.950(g), as revised, to replace separate partitioning and disaggregation construction and performance rules for each service in various rule parts. The Commission concludes that these changes will provide WRS licensees with greater flexibility to configure their licenses according to their operational needs, while still affording important safeguards against spectrum warehousing.

⁶ Specifically, in § 1.950(g), as revised herein, the Commission provides the parties to a partitioning and/or disaggregation arrangement with two options for satisfying service-specific performance requirements (i.e., construction and operation requirements). Under the first option, each party may individually satisfy any service-specific requirements and, upon failure, must individually face any service-specific performance penalties. Under the second option, both parties may agree to share responsibility for any service-specific requirements. Upon failure to meet their shared service-specific performance requirements, both parties will be subject to any service-specific penalties.

74. The Commission agrees with Verizon that imposing an independent construction requirement on both parties to a partitioning or disaggregation arrangement, as proposed in draft § 1.950(g) in the WRS Reform NPRM, might, under certain circumstances, unnecessarily impose additional construction requirements on parties to partitioning and disaggregation arrangements that would not have existed had the license not been partitioned or disaggregated. To address this potential issue, the Commission revises § 1.950(g) to allow participants to share the construction requirement, which ensures that no two parties to a partitioning or disaggregation arrangement will be required to build out more than 100 percent of the requirement for any particular geographic area or spectrum block. In addition, parties to partitioning and disaggregation arrangements are not required to continue construction in cases where the original licensee has already satisfied the requirement for the license term. However, to the extent that § 1.950(g), as revised, requires that partitionees and disaggregatees comply with interim and final construction benchmarks in addition to satisfying the renewal requirements the Commission adopts in this order, the Commission's interest in preventing spectrum warehousing that is permitted under current rules outweighs the potential added burden, if any, on these third-party licensees.

75. The Commission finds that the new rule adequately addresses commenters arguments that proposed § 1.950(g) would deter secondary market activity, especially with respect to small, rural licensees for whom buildout requirements may be prohibitively costly. The Commission also finds that its rule adequately addresses Blooston's arguments underlying its recommendation that the Commission exempt rural areas from the rule. The revised rule allows parties to partitioning and disaggregation arrangements to share service-specific construction requirements. The Commission concludes that the additional flexibility of the revised rule will continue to enable service providers to configure geographic area and spectrum block licenses to suit their unique operational needs, which includes using partitioning and disaggregation to open up licensing opportunities to rural carriers.

76. The Commission declines to retain "partitioner only" construction rules (wherein a partitioner can certify that it has met or will meet the construction requirement for the entire pre-

partitioned area) to encourage carriers to take risks in rural markets. This proposal would appear to allow a partitionee in certain services to hold a license for the partitioned area without deploying facilities on the spectrum for a significant period of time, even if the licensee must be able to certify that it is providing service at renewal, or otherwise make a showing to justify license renewal. The Commission concludes that the better way to promote service to rural markets is to ensure that all license holders—at least during the initial license term, and in circumstances where the original licensee has not previously satisfied the construction requirement for the entire geographic area or spectrum block—have, directly or indirectly, an obligation to construct and operate facilities on the spectrum.

77. The Commission declines to adopt CTIA’s proposal that the Commission should exempt a licensee’s wholly owned subsidiaries or commonly controlled affiliates when they partner with the licensee to divide the license. The Commission’s experience has shown that this type of intra-corporate family partitioning and disaggregation has proven particularly susceptible to manipulation for spectrum warehousing purposes simply because the parties to the division are commonly controlled. Adoption of CTIA’s proposal risks undermining rather than advancing the Commission’s objective of eliminating spectrum warehousing. Moreover, the addition of the new option to permit shared construction responsibility by a partitioner/partitionee or a disaggregator/disaggregatee should largely address this concern.

78. The Commission does not adopt the suggestions raised by MetroPCS and Verizon that the Commission exempt Broadband PCS from the proposed rule based on the argument that the substantial service requirement at renewal discourages parties to a partitioning arrangement from warehousing spectrum in the manner the Commission seeks to preclude. The Commission concludes that these licensees will be no worse off under a regulatory framework that holds all licensees to comparable requirements. Many services still allow parties to a partitioning or disaggregation arrangement to assign the performance requirement to one of the parties and thereby allow the other to delay or avoid construction in that party’s portion of the license (whether geography or spectrum) if they so choose.

This problem exists in numerous services, even if some service rules may discourage so-called free riders. By this Order, the Commission seeks to consolidate the services under a single set of rules and proscribe spectrum warehousing by all licensees in the covered services, not just the few who hold spectrum subject to service rules that more effectively prevent such warehousing.

79. The Commission also declines to adopt CTIA's proposal to prohibit parties from assuming construction and performance obligations for an entire license area or spectrum block unless they also hold spectrum covering a majority of that same geographic area or spectrum block. CTIA does not provide evidence demonstrating why this approach would be more effective at preventing spectrum warehousing than the consistent approach envisioned by the partitioning and disaggregation rules adopted today, nor does it acknowledge or address the potential administrative burdens that would be placed on applicants and on Commission staff in addressing such arrangements. The Commission believes that adoption of CTIA's proposal would provide greater uncertainty in the spectrum marketplace and would not consistently and successfully prevent spectrum warehousing.

80. The Commission also declines to exempt existing partitioning and disaggregation arrangements from application of the requirements of § 1.950(g) as adopted today, and apply the rule only prospectively and only to future partitioning and disaggregation arrangements. By adopting § 1.950(g) as revised, the Commission intends to prevent spectrum warehousing and ensure that future transactions facilitate the availability of spectrum in the marketplace for licensees who are most highly motivated to use it. By this action, the Commission seeks to resolve loopholes in the current partitioning and disaggregation rules that could be and have been manipulated to avoid the very construction and substantial service obligations that promote efficient spectrum use. However, the Commission agrees that its rules should not be applied retroactively to disrupt transactions that have already been negotiated based on the pre-existing rules and submitted to the Commission for approval. Specifically, § 1.950(g) will be applied to partitioning and disaggregation arrangements reflected in applications filed on or after the effective date of the new rule, and not to any arrangements reflected in an already granted application or

in an application filed before the effective date of new § 1.950(g).

81. The Commission makes no changes in response to AT&T's argument that new entrants will be discouraged from acquiring spectrum through partitioning or disaggregation when it is late in the original license term, and there is little time to fulfill the construction obligation. The Commission concludes that this concern is related not to partitioning and disaggregation rules, but to the current build out rules, which provide that the performance requirements associated with a license are not reduced or extended as a result of any secondary market transaction, including one near the end of a license term. The rule modifications do not alter those obligations.

82. Finally, the Commission does not address the suggestion by Sprint and AT&T that licensees that have acquired previously partitioned and/or disaggregated licenses be allowed, as a matter of processing, to consolidate the subdivided parts into the original license configuration. The Commission finds this proposal to be beyond the scope of this proceeding, which is narrowly focused on standardizing and clarifying the Commission's partitioning and disaggregation rules across services. The question of whether, and how, a partitioned or disaggregated license can be reconstituted as a matter of processing can be addressed by Commission staff under current rules and licensing systems.

83. Commenting parties in this proceeding that addressed proposed § 1.950 focused solely on proposed § 1.950(g). Accordingly, based on the record in this proceeding, the Commission adopt § 1.950 largely as proposed in the WRS Reform NPRM, with the exception of § 1.950(g). The Commission further concludes that adopting new § 1.950(g), as revised herein, will most effectively balance its competing obligations to: (1) remove potential barriers to entry by returning heretofore fallow spectrum to the marketplace, and thereby increase competition; (2) encourage parties to use spectrum more efficiently; and (3) speed service to unserved and underserved areas.

D. Freeze on the Filing of Competing Renewal Applications and Resolution of Previously Pending Competing Renewal Applications

84. In the WRS Reform Order, the Commission imposed a freeze on the filing of competing renewal applications and held in abeyance the already-filed competing renewal applications until the conclusion of this proceeding. The Commission stated that, if it were to adopt the rules proposed in the WRS Reform NPRM, it would “dismiss all pending mutually exclusive applications and related correspondence filed with the Commission regarding those applications.”

85. At the time that the WRS Reform Order was adopted, the Commission had before it a total of 151 renewal applications in three different service bands, and 178 applications competing with those renewal applications. Most of those competing applications—175 of 178—were filed in the 2.3 GHz Band against WCS licensees. These competing applications were dismissed by the Commission after the relevant parties reached settlement agreements. Of the remaining three competing applications, two were against Cellular licensees’ renewal applications and one was against a Broadband PCS licensee’s renewal application. The two Cellular competing applications have since been dismissed or resolved. The PCS competing application was withdrawn after the applicant obtained the underlying license at issue via the license assignment process.

86. Because there are no remaining pending competing renewal applications, there is no further action needed on the Commission’s part to dismiss such applications.

E. Transition From Interim Renewal Application Procedures

87. The Commission directed incumbent licensees to continue to file timely renewal applications as required by applicable Commission rules during the pendency of this rulemaking. The Commission further directed that renewal applications routinely should continue to be placed on a Bureau accepted for filing public notice, and that interested parties could continue to file petitions to deny consistent with the rules. In order to reduce uncertainty that might be caused by long-pending renewal applications, the Commission directed the Bureau to routinely grant renewal applications during the pendency of this proceeding, conditioned on the outcome of this rulemaking.

88. Notwithstanding the Commission's statement in the WRS Reform Order that interested parties may file petitions to deny consistent with the requirements of its rules, NTCH, Inc., now asks that the Commission provide an opportunity for a potential applicant to challenge a renewal applicant's basic qualifications at the close of this docket. NTCH asserts that providing this opportunity to file petitions to deny against conditionally granted renewal applications is necessary to avoid "permanently abrogat[ing] the legal rights of parties interested in challenging the grant of a renewal application." The Commission denies NTCH's request that it open a window for the filing of petitions to deny against licensees whose renewal applications have been conditionally granted. The opportunity to file petitions to deny against renewal applications has been present throughout the pendency of this proceeding, and NTCH has not offered a persuasive legal or equitable argument in support of having a second shot at these renewal applications. The Commission accordingly declines to open a window for the filing of petitions to deny against renewal applications that have been conditionally granted.

89. Petitions for reconsideration of the actions taken by the WRS Reform Order were filed by: (1) Atlantic Tele-Network, Inc., in connection with its wholly owned indirect subsidiary's, Tisdale Telephone Company, LLC, competing Cellular application with the Cellular renewal application filed by Kankakee Cellular L.L.C.; (2) CTIA, AT&T, Cricket, Rural Cellular Association, Sprint, T-Mobile, US Cellular, and Verizon Wireless; (3) Green Flag Wireless, LLC, CWC Licensing Holding, Inc., James McCotter, and NTCH-CA, Inc.; and (4) Wireless Communications Association International, Inc. (WCAI).

90. The Atlantic Tele-Network, Inc. petition has been mooted by the fact that Kankakee withdrew its renewal application for a Cellular license authorization in the Kankakee, Illinois market, and Tisdale was granted a Cellular license for that market. The Commission previously approved the withdrawal of the petition for reconsideration filed by Green Flag Wireless, LLC, CWC License Holding, Inc., James McCotter, and NTCH-CA, Inc., along with another petition for reconsideration filed by the same parties on October 22, 2010, pursuant to a settlement agreement. The WCAI petition for partial

reconsideration was addressed by the WRS Reform Clarification Public Notice, (WT Docket No. 10-112) on March 18, 2011, issued by the Bureau to clarify the conditional grant of applications for renewal of license in the WRS Reform Order. Subsequent to the release of the WRS Reform Clarification Public Notice, CTIA, AT&T, Cricket, Rural Cellular Association, Sprint, T-Mobile, US Cellular, and Verizon Wireless filed a motion to withdraw their petition for reconsideration. The Commission finds no reason to address the arguments in the CTIA Petition and accordingly will grant the request to withdraw the CTIA Petition.

91. The Commission directs the Bureau to take the necessary steps to cease conditioning the grant of renewal applications on the outcome of this proceeding. In addition, the Commission directs the Bureau to take the necessary steps to remove the condition from already granted renewal applications or otherwise make clear on the face of such licenses that such condition is no longer valid.

II. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

92. The Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), it previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

93. The Commission assessed the effects of the policies adopted in the Order with regard to information collection burdens on small business concerns, and found that these policies will benefit many companies with fewer than 25 employees because the revisions the Commission adopts should

reduce filing burdens for all WRS licensees, whether large or small. Also, by ensuring, pursuant to the partitioning and disaggregation rules and the permanent discontinuance rules the Commission adopts today, that valuable spectrum will not lie fallow, these policies will provide small entities with more opportunities to gain access to valuable spectrum. In addition, the Commission has described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA) in Appendix B of the Order.

B. Congressional Review Act

94. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA (5 U.S.C. 603(a)).

C. Final Regulatory Flexibility Analysis

95. The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, the Commission has prepared a FRFA, set forth in Appendix B of the Order, concerning the possible impact of the rule changes.

D. Ex Parte Presentations

96. This proceeding shall continue to be treated as “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was

made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the Commission's Electronic Comment Filing System (ECFS) available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

97. People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

III. ORDERING CLAUSES

98. Accordingly, IT IS ORDERED, pursuant to sections 1, 2, 4(i), 4(j), 7, 301, 303, 307, 308, 309, 310, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 157, 301, 303, 307, 308, 309, 310, 332, that this SECOND REPORT AND ORDER in WT Docket No. 10-112 IS ADOPTED.

99. IT IS FURTHER ORDERED that parts 1, 22, 24, 27, 30, 74, 80, 90, 95, and 101 of the Commission's rules, 47 CFR parts 1, 22, 24, 27, 30, 74, 80, 90, 95, and 101, ARE AMENDED, effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** except as otherwise provided herein.

100. IT IS FURTHER ORDERED that the amendments adopted in this SECOND REPORT AND ORDER, and to §§ 1.949, 1.950, and 1.953, which contain new or modified information collection requirements that require review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, WILL BECOME EFFECTIVE after OMB review and approval, on the effective date specified in a notice that the Commission will have published in the Federal Register announcing such approval and effective date.

101. IT IS FURTHER ORDERED that the amendments adopted in this SECOND REPORT AND ORDER, and to paragraphs (e), (q)(7), (r)(6), (s)(6), and (t)(6) of § 27.14, WILL BECOME EFFECTIVE after OMB review and approval of § 1.949, on the effective date specified in a notice that the Commission will have published in the Federal Register announcing such approval and effective date.

102. IT IS FURTHER ORDERED that the amendments adopted in this SECOND REPORT AND ORDER, and to §§ 22.317, 22.947, 27.17, 30.106, 74.632, 90.157, 90.631, and 101.65, WILL BECOME EFFECTIVE after OMB review and approval of § 1.953, on the effective date specified in a notice that the Commission will have published in the Federal Register announcing such approval and effective date.

103. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 405 of the Communications Act of 1934, 47 U.S.C. 154(i), 405, and § 1.106 of the Commission's rules, 47 CFR 1.106, the Motion of CTIA – The Wireless Association®, AT&T Services, Inc., Cricket Communications, Inc., Rural Cellular Association, Sprint Nextel Corporation, T-Mobile USA, United States Cellular Corporation and Verizon Wireless To Withdraw Petition for Reconsideration, filed May 31, 2011, to withdraw their Petition for Reconsideration, filed Aug. 6, 2010, IS GRANTED.

104. IT IS FURTHER ORDERED that, pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), the Commission SHALL SEND a copy of the SECOND REPORT AND ORDER to Congress and to the Government Accountability Office.

105. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the SECOND REPORT AND ORDER, including the Initial Regulatory Flexibility Analysis and the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 1, 22, 24, 27, 30, 74, 80, 90, 95, and 101

Communications common carriers, Radio, Reporting and recordkeeping requirements.

FEDERAL COMMUNICATIONS COMMISSION.

Katura Jackson,
Federal Register Liaison Officer.
Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 22, 24, 27, 30, 74, 80, 90, 95, and 101 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 is revised to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 310, 332, 1403, 1404, 1451, 1452, and 1455.

2. Amend § 1.907 by adding the definitions of “Covered Geographic Licenses” and “Covered Site-based Licenses” in alphabetical order to read as follows:

§ 1.907 Definitions.

* * * * *

Covered Geographic Licenses. Covered geographic licenses consist of the following services: 1.4 GHz Service (part 27, subpart I of this chapter); 1.6 GHz Service (part 27, subpart J); 24 GHz Service and Digital Electronic Message Services (part 101, subpart G); 218-219 MHz Service (part 95, subpart F); 220-222 MHz Service, excluding public safety licenses (part 90, subpart T); 600 MHz Service (part 27, subpart N); 700 MHz Commercial Services (part 27, subparts F and H); 700 MHz Guard Band Service (part 27, subpart G); 800 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Specialized Mobile Radio Service (part 90, subpart S); Advanced Wireless Services (part 27, subparts K and L); Air-Ground Radiotelephone Service (Commercial Aviation) (part 22, subpart G); Broadband Personal Communications Service (part 24, subpart E); Broadband Radio Service (part 27, subpart M); Cellular Radiotelephone Service (part 22, subpart H); Dedicated Short Range Communications Service, excluding public safety licenses (part 90, subpart M); H Block Service (part 27, subpart K); Local Multipoint Distribution Service (part 101, subpart L); Multichannel Video Distribution and Data Service (part 101, subpart P); Multilateration Location and Monitoring Service (part 90, subpart M); Multiple Address Systems (EAs) (part 101, subpart O); Narrowband Personal Communications Service (part 24,

subpart D); Paging and Radiotelephone Service (part 22, subpart E; part 90, subpart P); VHF Public Coast Stations, including Automated Maritime Telecommunications Systems (part 80, subpart J); Upper Microwave Flexible Use Service (part 30); and Wireless Communications Service (part 27, subpart D).

Covered Site-based Licenses. Covered site-based licenses consist of the following services: 220-222 MHz Service (site-based), excluding public safety licenses (part 90, subpart T of this chapter); 800/900 MHz (SMR and Business and Industrial Land Transportation Pool) (part 90, subpart S); Aeronautical Advisory Stations (Unicom) (part 87, subpart G); Air-Ground Radiotelephone Service (General Aviation) (part 22, subpart G); Alaska-Public Fixed Stations (part 80, subpart O); Broadcast Auxiliary Service (part 74, subparts D, E, F, and H); Common Carrier Fixed Point-to-Point, Microwave Service (part 101, subpart I); Industrial/Business Radio Pool (part 90, subpart C); Local Television Transmission Service (part 101, subpart J); Multiple Address Systems (site-based), excluding public safety licenses (part 101, subpart H); Non-Multilateration Location and Monitoring Service (part 90, subpart M); Offshore Radiotelephone Service (part 22, subpart I); Paging and Radiotelephone Service (site-based) (part 22, subpart E); Private Carrier Paging (part 90, subpart P); Private Operational Fixed Point-to-Point Microwave Service, excluding public safety licenses (part 101, subpart H); Public Coast Stations (site-based) (part 80, subpart J); Radiodetermination Service Stations (Radionavigation Land Stations) (part 87, subpart Q); Radiolocation Service (part 90, subpart F); and Rural Radiotelephone Service (including Basic Exchange Telephone Radio Service) (part 22, subpart F).

* * * * *

3. Amend § 1.934 by:
 - a. Revising paragraphs (a)(1)(ii);
 - b. Removing paragraph (a)(3); and
 - c. Revising paragraphs (b) and (c).

The revisions read as follows:

§ 1.934 Defective applications and dismissal.

* * * * *

(a) * * *

(1) * * *

(ii) If the applicant requests dismissal of its application without prejudice, the Commission will dismiss that application without prejudice, unless it is an application for which the applicant submitted the winning bid in a competitive bidding process.

* * * * *

(b) *Dismissal of mutually exclusive applications not granted.* The Commission may dismiss mutually exclusive applications for which the applicant did not submit the winning bid in a competitive bidding process.

(c) *Dismissal for failure to prosecute.* The Commission may dismiss applications for failure of the applicant to prosecute or for failure of the applicant to respond substantially within a specified time period to official correspondence or requests for additional information. Such dismissal may be with prejudice in cases of non-compliance with § 1.945. The Commission may dismiss applications with prejudice for failure of the applicant to comply with requirements related to a competitive bidding process.

* * * * *

4. Revise § 1.949 to read as follows:

§ 1.949 Application for renewal of authorization.

(a) Filing requirements. Applications for renewal of authorizations in the Wireless Radio Services must be filed no later than the expiration date of the authorization, and no sooner than 90 days prior to the expiration date. Renewal applications must be filed on the same form as applications for initial authorization in the same service, i.e., FCC Form 601 or 605.

(b) Common expiration date. Licensees with multiple authorizations in the same service may request a common date on which such authorizations expire for renewal purposes. License terms may be shortened by up to one year but will not be extended.

(c) Implementation. Covered Site-based Licenses, except Common Carrier Fixed Point-to-Point Microwave Service (part 101, subpart I of this chapter), and Covered Geographic Licenses in the 600

MHz Service (part 27, subpart N); 700 MHz Commercial Services (part 27, subpart F); Advanced Wireless Services (part 27, subpart L) (AWS-3 (1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz) and AWS-4 (2000-2020 MHz and 2180-2200 MHz) only); and H Block Service (part 27, subpart K) must comply with paragraphs (d) through (h) of this section. All other Covered Geographic Licenses must comply with paragraphs (d) through (h) of this section beginning on January 1, 2023. Common Carrier Fixed Point-to-Point Microwave Service (part 101, subpart I) must comply with paragraphs (d) through (h) of this section beginning on October 1, 2018.

(d) Renewal Standard. An applicant for renewal of an authorization of a Covered Site-based License or a Covered Geographic License must demonstrate that over the course of the license term, the licensee(s) provided and continue to provide service to the public, or operated and continue to operate the license to meet the licensee(s)' private, internal communications needs.

(e) Safe harbors. An applicant for renewal will meet the Renewal Standard if it can certify that it has satisfied the requirements of one of the following safe harbors:

(1) Covered Site-based Licenses. (i) The applicant must certify that it is continuing to operate consistent with its most recently filed construction notification (or most recent authorization, when no construction notification is required).

(ii) The applicant must certify that no permanent discontinuance of service occurred during the license term. This safe harbor may be used by any Covered Site-based License.

(2) Geographic licenses – commercial service. (i) For an applicant in its initial license term with an interim performance requirement, the applicant must certify that it has met its interim performance requirement and that over the portion of the license term following the interim performance requirement, the applicant continues to use its facilities to provide at least the level of service required by its interim performance requirement; and the licensee has met its final performance requirement and continues to use its facilities to provide at least the level of service required by its final performance requirement through the end of the license term. For an applicant in its initial license term with no interim performance requirement, the applicant must certify that it has met its final

performance requirement and continues to use its facilities to provide at least the level of service required by its final performance requirement through the end of the license term. For an applicant in any subsequent license term, the applicant must certify that it continues to use its facilities to provide at least the level of service required by its final performance requirement through the end of any subsequent license terms.

(ii) The applicant must certify that no permanent discontinuance of service occurred during the license term. This safe harbor may be used by any Covered Geographic License.

(3) Geographic licenses – private systems. (i) For an applicant in its initial license term with an interim performance requirement, the applicant must certify that it has met its interim performance requirement and that over the portion of the license term following the interim performance requirement, the applicant continues to use its facilities to further the applicant's private business or public interest/public safety needs at or above the level required to meet its interim performance requirement; and the applicant has met its final performance requirement and continues to use its facilities to provide at least the level of operation required by its final performance requirement through the end of the license term. For an applicant in its initial license term with no interim performance requirement, the applicant must certify that it has met its final performance requirement and continues to use its facilities to provide at least the level of operation required by its final performance requirement through the end of the license term. For an applicant in any subsequent license term, the applicant must certify that it continues to use its facilities to further the applicant's private business or public interest/public safety needs at or above the level required to meet its final performance requirement.

(ii) The applicant must certify that no permanent discontinuance of operation occurred during the license term. This safe harbor may be used by any Covered Geographic License.

(4) Partitioned or disaggregated license without a performance requirement. (i) The applicant must certify that it continues to use its facilities to provide service or to further the applicant's private business or public interest/public safety needs.

(ii) The applicant must certify that no permanent discontinuance of service occurred during the license term. This safe harbor may be used by any Covered Geographic License.

(f) Renewal Showing. If an applicant for renewal cannot meet the Renewal Standard in paragraph (d) of this section by satisfying the requirements of one of the safe harbors in paragraph (e) of this section, it must make a Renewal Showing, independent of its performance requirements, as a condition of renewal. The Renewal Showing must specifically address the Renewal Standard by including a detailed description of the applicant's provision of service (or, when allowed under the relevant service rules or pursuant to waiver, use of the spectrum for private, internal communication) during the entire license period and address, as applicable:

- (1) The level and quality of service provided by the applicant (e.g., the population served, the area served, the number of subscribers, the services offered);
- (2) The date service commenced, whether service was ever interrupted, and the duration of any interruption or outage;
- (3) The extent to which service is provided to rural areas;
- (4) The extent to which service is provided to qualifying tribal land as defined in § 1.2110(e)(3)(i) of this chapter; and
- (5) Any other factors associated with the level of service to the public.

(g) Regulatory Compliance Certification. An applicant for renewal of an authorization in the Wireless Radio Services identified in paragraph (d) of this section must make a Regulatory Compliance Certification certifying that it has substantially complied with all applicable FCC rules, policies, and the Communications Act of 1934, as amended.

(h) Consequences of denial. If the Commission, or the Wireless Telecommunications Bureau acting under delegated authority, finds that a licensee has not met the Renewal Standard under paragraph (d) of this section, or that its Regulatory Compliance Certification under paragraph (g) of this section is insufficient, its renewal application will be denied, and its licensed spectrum will return automatically to the Commission for reassignment (by auction or other mechanism). In the case of certain services

licensed site-by-site, the spectrum will revert automatically to the holder of the related overlay geographic-area license. To the extent that an AWS-4 licensee also holds the 2 GHz Mobile Satellite Service (MSS) rights for the affected license area, the MSS protection rule in § 27.1136 of this chapter will no longer apply in that license area.

5. Add § 1.950 to read as follows:

§ 1.950 Geographic partitioning and spectrum disaggregation.

(a) Definitions. The terms “county and county equivalent,” “geographic partitioning,” and “spectrum disaggregation” as used in this section are defined as follows:

(1) County and county equivalent. The terms county and county equivalent as used in this part are defined by Federal Information Processing Standards (FIPS) 6-4, which provides the names and codes that represent the counties and other entities treated as equivalent legal and/or statistical subdivisions of the 50 States, the District of Columbia, and the possessions and freely associated areas of the United States. Counties are the “first-order subdivisions” of each State and statistically equivalent entity, regardless of their local designations (county, parish, borough, etc.). Thus, the following entities are equivalent to counties for legal and/or statistical purposes: The parishes of Louisiana; the boroughs and census areas of Alaska; the District of Columbia; the independent cities of Maryland, Missouri, Nevada, and Virginia; that part of Yellowstone National Park in Montana; and various entities in the possessions and associated areas. The FIPS codes and FIPS code documentation are available online at <http://www.itl.nist.gov/fipspubs/index.htm>.

(2) Geographic partitioning. Geographic partitioning is the assignment of a geographic portion of a geographic area licensee’s license area.

(3) Spectrum disaggregation. Spectrum disaggregation is the assignment of portions of blocks of a geographic area licensee’s spectrum.

(b) Eligibility. Covered Geographic Licenses are eligible for geographic partitioning and spectrum disaggregation.

(1) Geographic partitioning. An eligible licensee may partition any geographic portion of its license

area, at any time following grant of its license, subject to the following exceptions:

- (i) 220 MHz Service licensees must comply with § 90.1019 of this chapter.
- (ii) Cellular Radiotelephone Service licensees must comply with § 22.948 of this chapter.
- (iii) Multichannel Video & Distribution and Data Service licensees are only permitted to partition licensed geographic areas along county borders (Parishes in Louisiana or Territories in Alaska).

(2) Spectrum disaggregation. An eligible licensee may disaggregate spectrum in any amount, at any time following grant of its license to eligible entities, subject to the following exceptions:

- (i) 220 MHz Service licensees must comply with § 90.1019 of this chapter.
- (ii) Cellular Radiotelephone Service licensees must comply with § 22.948 of this chapter.
- (iii) VHF Public Coast (156-162 MHz) spectrum may only be disaggregated in frequency pairs, except that the ship and coast transmit frequencies comprising Channel 87 (see § 80.371(c) of this chapter) may be disaggregated separately.
- (iv) Disaggregation is not permitted in the Multichannel Video & Distribution and Data Service 12.2-12.7 GHz band.

(c) Filing requirements. Parties seeking approval for geographic partitioning, spectrum disaggregation, or a combination of both must apply for a partial assignment of authorization by filing FCC Form 603 pursuant to § 1.948. Each request for geographic partitioning must include an attachment defining the perimeter of the partitioned area by geographic coordinates to the nearest second of latitude and longitude, based upon the 1983 North American Datum (NAD83). Alternatively, applicants may specify an FCC-recognized service area (e.g., Basic Trading Area, Economic Area, Major Trading Area, Metropolitan Service Area, or Rural Service Area), county, or county equivalent, in which case, applicants need only list the specific FCC-recognized service area, county, or county equivalent names comprising the partitioned area.

(d) Relocation of incumbent licensees. Applicants for geographic partitioning, spectrum disaggregation, or a combination of both must, if applicable, include a certification with their partial assignment of

authorization application stating which party will meet any incumbent relocation requirements, except as otherwise stated in service-specific rules.

(e) License term. The license term for a partitioned license area or disaggregated spectrum license is the remainder of the original licensee's license term.

(f) Frequency coordination. Any existing frequency coordination agreements convey with the partial assignment of authorization for geographic partitioning, spectrum disaggregation, or a combination of both, and shall remain in effect for the term of the agreement unless new agreements are reached.

(g) Performance requirements. Parties to geographic partitioning, spectrum disaggregation, or a combination of both, have two options to satisfy service-specific performance requirements (i.e., construction and operation requirements). Under the first option, each party may certify that it will individually satisfy any service-specific requirements and, upon failure, must individually face any service-specific performance penalties. Under the second option, both parties may agree to share responsibility for any service-specific requirements. Upon failure to meet their shared service-specific performance requirements, both parties will be subject to any service-specific penalties.

(h) Unjust enrichment. Licensees making installment payments or that received a bidding credit, that partition their licenses or disaggregate their spectrum to entities that do not meet the eligibility standards for installment payments or bidding credits, are subject to the unjust enrichment requirements of § 1.2111.

6. Add § 1.953 to read as follows:

§ 1.953 Discontinuance of service or operations.

(a) Termination of authorization. A licensee's authorization will automatically terminate, without specific Commission action, if the licensee permanently discontinues service or operations under the license during the license term. A licensee is subject to this provision commencing on the date it is required to be providing service or operating.

(b) 180-day Rule for Geographic Licenses. Permanent discontinuance of service or operations for Covered Geographic Licenses is defined as 180 consecutive days during which a licensee does not operate or, in the case of commercial mobile radio service providers, does not provide service to at least

one subscriber that is not affiliated with, controlled by, or related to the licensee.

(c) 365-day Rule for Site-based Licenses. Permanent discontinuance of service or operations for Covered Site-based Licenses is defined as 365 consecutive days during which a licensee does not operate or, in the case of commercial mobile radio service providers, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier.

(d) 365-day Rule for public safety licenses. Permanent discontinuance of operations is defined as 365 consecutive days during which a licensee does not operate. This 365-day rule applies to public safety licenses issued based on the applicant demonstrating eligibility under § 90.20 or § 90.529 of this chapter, or public safety licenses issued in conjunction with a waiver pursuant to section 337 of the Communications Act.

(e) Channel keepers. Operation of channel keepers (devices that transmit test signals, tones, color bars, or some combination of these, for example) does not constitute operation or service for the purposes of this section.

(f) Filing requirements. A licensee that permanently discontinues service as defined in this section must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 requesting license cancellation. An authorization will automatically terminate, without specific Commission action, if service or operations are permanently discontinued as defined in this section, even if a licensee fails to file the required form requesting license cancellation.

(g) Extension request. A licensee may file a request for a longer discontinuance period for good cause. An extension request must be filed at least 30 days before the end of the applicable 180-day or 365-day discontinuance period. The filing of an extension request will automatically extend the discontinuance period a minimum of the later of an additional 30 days or the date upon which the Wireless Telecommunications Bureau acts on the request.

7. Amend § 1.955 by revising paragraph (a)(3) to read as follows:

§ 1.955 Termination of authorizations.

* * * * *

(a) * * *

(3) Service discontinued. Authorizations automatically terminate, without specific Commission action, if service or operations are permanently discontinued. See § 1.953.

* * * * *

PART 22—PUBLIC MOBILE SERVICES

8. The authority citation for part 22 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 222, 303, 309 and 332.

§ 22.131 [Amended]

9. Amend § 22.131 as follows:

- a. Remove paragraph (b)(1);
- b. Redesignate paragraphs (b)(2) through (4) as paragraphs (b)(1) through (3);
- c. Remove paragraph (c)(3)(i);
- d. Redesignate paragraphs (c)(3)(ii) and (iii) as paragraphs (c)(3)(i) and (ii);
- e. Remove paragraph (c)(4)(i); and
- f. Redesignate paragraphs (c)(4)(ii) through (iv) as paragraphs (c)(4)(i) through (iii).

§ 22.317 [Removed]

10. Remove § 22.317.

§ 22.513 [Amended]

11. Amend § 22.513 by removing paragraphs (f) and (g).

§ 22.947 [Removed]

12. Remove § 22.947.

PART 24—PERSONAL COMMUNICATIONS SERVICES

13. The authority citation for part 24 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

§ 24.16 [Removed]

14. Remove § 24.16.

§ 24.104 [Amended]

15. Amend § 24.104 by removing paragraphs (f) and (g).

§ 24.714 [Amended]

16. Amend § 24.714 by removing paragraph (e).

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

17. The authority citation for part 27 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

18. Amend § 27.14 by:

- a. Revising the section heading;
- b. Removing and reserving paragraphs (b) through (f); and
- c. Removing paragraphs (q)(7), (r)(6), (s)(6), and (t)(6).

The revision reads as follows:

§ 27.14 Construction requirements.

* * * * *

§ 27.15 [Amended]

19. Amend § 27.15 by removing paragraph (d).

§ 27.17 [Removed]

20. Remove § 27.17.

PART 30—UPPER MICROWAVE FLEXIBLE USE SERVICE

21. The authority citation for part 30 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 303, 304, 307, 309, 310, 316, 332, 1302.

§ 30.105 [Amended]

22. Amend § 30.105 by removing paragraph (d).

§ 30.106 [Removed]

23. Remove § 30.106.

**PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER
PROGRAM DISTRIBUTIONAL SERVICES**

24. The authority citation for part 74 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336 and 554.

§ 74.632 [Amended]

25. Amend § 74.632 by removing paragraph (g).

PART 80—STATIONS IN THE MARITIME SERVICES

26. The authority citation for part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

27. Amend § 80.60 by revising paragraph (d) to read as follows:

§ 80.60 Partitioned licenses and disaggregated spectrum.

* * * * *

(d) *Partitioning and disaggregation construction requirements for site-based AMTS, and nationwide or multi-region LF, MF, and HF public coast.* Parties seeking to acquire a partitioned license or disaggregated spectrum from a site-based AMTS, or nationwide or multi-region LF, MF, and HF public coast licensee will be required to construct and commence “service to subscribers” in all facilities acquired through such transactions within the original construction deadline for each facility as set forth in § 80.49. Failure to meet the individual construction deadline will result in the automatic termination of the facility’s authorization.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

28. The authority citation for part 90 continues to read as follows:

AUTHORITY: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156.

§ 90.157 [Removed]

29. Remove § 90.157.

30. Amend § 90.165 by:

- a. Removing paragraph (b)(1);
- b. Redesignating paragraphs (b)(2) through (4) as paragraphs (b)(1) through (3);
- c. Removing paragraph (c)(3)(i);
- d. Redesignating paragraphs (c)(3)(ii) and (iii) as paragraphs (c)(3)(i) and (ii);
- e. Revising newly redesignated paragraph (c)(3)(ii);
- f. Removing paragraph (c)(4)(i); and
- g. Redesignating paragraphs (c)(4)(ii) through (iv) as paragraphs (c)(4)(i) through (iii).

The revision reads as follows:

§ 90.165 Procedures for mutually exclusive applications.

* * * * *

(c) * * *

(3) * * *

(ii) If any mutually exclusive application filed on the earliest filing date is an application for modification, a same-day filing group is used.

* * * * *

§ 90.365 [Amended]

31. Amend § 90.365 by removing paragraph (d).

32. Amend § 90.375 by revising paragraph (b) to read as follows:

§ 90.375 RSU license areas, communication zones and registrations.

* * * * *

(b) Applicants who are approved in accordance with FCC Form 601 will be granted non-exclusive licenses for all non-reserved DSRCS frequencies (see § 90.377). Such licenses serve as a prerequisite of registering individual RSUs located within the licensed geographic area described in paragraph (a) of this

section. Licensees must register each RSU in the Universal Licensing System (ULS) before operating such RSU. RSU registrations are subject, inter alia, to the requirements of § 1.923 of this chapter as applicable (antenna structure registration, environmental concerns, international coordination, and quiet zones). Additionally, RSUs at locations subject to NTIA coordination (see § 90.371(b)) may not begin operation until NTIA approval is received. Registrations are not effective until the Commission posts them on the ULS. It is the DSRCS licensee's responsibility to delete from the registration database any RSUs that have been discontinued.

* * * * *

33. Amend § 90.631 by revising paragraph (f) to read as follows:

§ 90.631 Trunked systems loading, construction and authorization requirements.

* * * * *

(f) If a station is not placed in permanent operation, in accordance with the technical parameters of the station authorization, within one year, except as provided in § 90.629, its license cancels automatically. For purposes of this section, a base station is not considered to be placed in operation unless at least two associated mobile stations, or one control station and one mobile station, are also placed in operation.

* * * * *

34. Amend § 90.685 by revising paragraph (a) to read as follows:

§ 90.685 Authorization, construction and implementation of EA licenses.

(a) EA licenses in the 809-824/854-869 MHz band will be issued for a term not to exceed ten years.

* * * * *

35. Revise § 90.743 to read as follows:

§ 90.743 Renewal requirements.

Until January 1, 2023, all licensees seeking renewal of their authorizations at the end of their license term must file a renewal application in accordance with the provisions of § 1.949 of this chapter. Licensees must demonstrate, in their application, that:

(a) They have provided “substantial” service during their past license term. “Substantial” service is

defined in this rule as service that is sound, favorable, and substantially above a level of mediocre service that just might minimally warrant renewal; and

(b) They have substantially complied with applicable FCC rules, policies, and the Communications Act of 1934, as amended.

§ 90.813 [Amended]

36. Amend § 90.813 by removing paragraph (e).

§ 90.816 [Removed]

37. Remove § 90.816.

§ 90.911 [Amended]

38. Amend § 90.911 by removing paragraphs (e) and redesignating paragraph (f) as (e).

§ 90.1019 [Amended]

39. Amend § 90.1019 by removing paragraph (d).

PART 95—PERSONAL RADIO SERVICES

40. The authority citation for part 95 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302(a), 303, and 307(e).

§ 95.1923 [Amended]

41. Amend § 95.1923 by removing paragraph (d).

42. Amend § 95.1933 by revising paragraph (a) and paragraph (b) introductory text to read as follows:

§ 95.1933 Construction requirements.

(a) Each 218-219 MHz Service licensee must make a showing of “substantial service” within ten years of the license grant. Until January 1, 2023, “substantial service” assessment will be made at renewal pursuant to the provisions and procedures contained in § 1.949 of this chapter.

(b) Until January 1, 2023, each 218-219 MHz Service licensee must file a report to be submitted to inform the Commission of the service status of its system. The report must be labeled as an exhibit to the renewal application. At minimum, the report must include:

* * * * *

PART 101—FIXED MICROWAVE SERVICES

43. The authority citation for part 101 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303.

44. Revise § 101.65 to read as follows:

§ 101.65 Termination of station authorizations.

In addition to the provisions of § 1.953 of this chapter, a site-based license will be automatically terminated in whole or in part without further notice to the licensee upon the voluntary removal or alteration of the facilities, so as to render the station not operational for a period of 30 days or more. A licensee is subject to this provision commencing on the date it is required to be providing service or operating under § 101.63. This provision is inapplicable to blanket authorizations to operate fixed stations at temporary locations pursuant to the provisions of § 101.31(a)(2). See § 101.305 for additional rules regarding temporary and permanent discontinuation of service.

45. Amend § 101.527 by revising paragraph (a) and paragraph (b) introductory text to read as follows:

§ 101.527 Construction requirements for 24 GHz operations.

(a) Each licensee must make a showing of “substantial service” within ten years of its license grant.

“Substantial service” is a service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal during its past license term. Until January 1, 2023, “substantial service” assessment will be made at renewal pursuant to the provisions and procedures set forth in § 1.949 of this chapter.

(b) Until January 1, 2023, each licensee must, at a minimum file:

* * * * *

§ 101.529 [Removed]

46. Remove § 101.529.

§ 101.535 [Amended]

47. Amend § 101.535 by removing paragraph (d).

48. Revise § 101.1011 to read as follows:

§ 101.1011 Construction requirements.

LMDS licensees must make a showing of “substantial service” in their license area within ten years of being licensed. “Substantial” service is defined as service which is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal. Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

§ 101.1111 [Amended]

49. Amend § 101.1111 by removing paragraph (e).

50. Amend § 101.1323 by revising paragraph (c) to read as follows:

§ 101.1323 Spectrum aggregation, disaggregation, and partitioning.

* * * * *

(c) Construction requirements. Responsible parties must submit supporting documents showing compliance with the respective construction requirements within the appropriate construction benchmarks set forth in § 101.1325.

* * * * *

§ 101.1327 [Removed]

51. Remove § 101.1327.

52. Amend § 101.1413 by revising the section heading, paragraph (b) introductory text, and paragraph (c) to read as follows:

§ 101.1413 License term and construction requirements.

* * * * *

(b) As a construction requirement, MVDDS licensees must make a showing of substantial service at the end of five years into the license period and ten years into the license period. The substantial service requirement is defined as a service that is sound, favorable, and substantially above a level of mediocre

service which might minimally warrant renewal. At the end of five years into the license term and ten years into the license period, the Commission will consider factors such as:

* * * * *

(c) The renewal application of an MVDDS licensee is governed by § 1.949 of this chapter.

§ 101.1415 [Amended]

53. Amend § 101.1415 by removing paragraph (f).

54. Amend § 101.1513 by revising the section heading to read as follows:

§ 101.1513 License term.

* * * * *

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